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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,619	08/10/2001	Arvind D. Patel	11836.0702.NPUS00	5353
27551	7590	01/07/2004		
STEPHEN H. CAGLE HOWREY SIMON ARNOLD & WHITE LLP 750 BERING DRIVE HOUSTON, TX 77057			EXAMINER TUCKER, PHILIP C	
			ART UNIT 1712	PAPER NUMBER

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/927,619	PATEL ET AL. 
	Examiner Philip C Tucker	Art Unit 1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 06 October 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1,4-9, 11, 13, 14, 17-22, 25-30, 32 and 35 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,4-9, 11, 13, 14, 17-22, 25-30, 32 and 35 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) All    b) Some \* c) None of:

        1. Certified copies of the priority documents have been received.

        2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

        3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    \* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

    a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .      6) Other: \_\_\_\_\_ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-9, 11, 13, 14, 17-22, 25-30, 32 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/18383 in view of Brown (2900336) and Patel (5189012).

WO '383 teaches a water in oil emulsion which comprises a polyalphaolefin continuous phase which can comprise a polyglyceryl fatty acid diester such as triglyceryl diisostearate (page 3, lines 6-9). The use of diglyceryl diisostearate would be obvious over the teaching of the compounds diglyceryl dipalminate and triglyceryl diisostearate, and the general teaching of a polyglyceryl fatty acid diester by WO '383. The emulsion is taught as being useful as a drilling fluid (page 4, lines 16-18). WO '383 differs from the present invention in that the specific use of a weighting agent is not exemplified. Brown teaches that drilling fluids, such as water in oil emulsions will have weighting materials such as barite, iron oxide or galena added to impart proper density (column 1, lines 25-30). Patel teaches that polyalphaolefin continuous phase water in oil emulsions may comprise weighting materials, such as barite, iron oxide and calcium carbonate to impart a specific density to the drilling fluid (column 9, lines 23-32). The examples further teach the use of calcium chloride in the drilling fluid emulsions (see examples). It would be obvious to one of ordinary skill in the art to utilize weighting materials as taught by Brown and Patel, in the fluid of WO '383, given the teaching of Brown and Patel that such weighting materials are useful in obtaining the desired density for water in oil emulsion drilling fluids. The utility of such fluids in drilling subterranean formations would be obvious over the teaching of their utility as drilling fluids.

3. Applicants arguments have been considered but are not deemed persuasive. Applicant has argued that WO '383 teaches the use of the water in oil emulsion as a cosmetic cream or lotion, and thus one of ordinary skill in the art would not look to use the formulation as a drilling fluid. WO '383 however specifically teaches that the emulsion is useful as a drilling fluid (page 4, lines 16-19). Since they are taught as useful as drilling fluids, they must be able to be formulated to have properties consistent with a drilling fluid. A cosmetic lotion or cream is only one use of the composition described by WO '383. The rejection is thus maintained.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Tucker whose telephone number is 571-272-1095. The examiner can normally be reached on Monday - Friday, Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone

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number for the organization where this application or proceeding is assigned is (703)  
872-9306.

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the receptionist whose telephone number is 703-308-  
0651.



Philip C Tucker  
Primary Examiner  
Art Unit 1712

PCT-2924